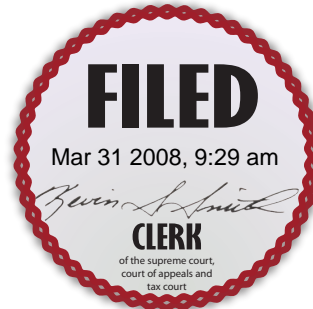


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

**KATHERINE A. CORNELIUS**  
Marion County Public Defender Agency  
Appellate Division  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana  
  
**JESSICA A. MEEK**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

ROJAE BROWN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0706-CR-478
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

---

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Patricia Gifford, Judge  
Cause No. 49G04-0606-FA-116286

---

**March 31, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Following a jury trial, Rojae Brown appeals his convictions for attempted murder,<sup>1</sup> a Class A felony, and carrying a handgun without a license<sup>2</sup> as a Class A misdemeanor. Brown raises two issues, which we restate as:

- I. Whether the trial court erred when it excluded evidence that the victim fired a gun in the air several hours before she was shot.
- II. Whether the State presented sufficient evidence to convict Brown of attempted murder and carrying a handgun without a license.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On June 22, 2006, Patricia Compton's thirteen-year-old daughter, K.C., told Compton that Brown had forced her to have sex with him. Compton reported the allegations to authorities that day, and Compton and her daughter were scheduled to be interviewed by police about the matter on June 26. Meanwhile, on June 24, Compton had two conversations with Karen McGuire, Brown's mother, about the molestation allegations. Brown was present for at least one of those conversations, which took place at Compton's home. Compton indicated at that time that she wanted Brown off her property.

That same night, June 24, Compton was sitting on the front porch of her home; Brown resided in the house next door.<sup>3</sup> At approximately 11:45 p.m., she noticed Brown, wearing all black clothing, standing across the street under a streetlight. Because Compton felt that he was staring at her in a threatening manner, she went inside her residence and obtained her

---

<sup>1</sup> See IC 35-41-5-1; IC 35-42-1-1.

<sup>2</sup> See IC 35-47-2-1.

<sup>3</sup> Compton lived in the south side of a "double" that housed two residences. *Tr.* at 72-74. Brown lived in the northern residence of the "double" located next door. *Id.* Hence, they lived just doors apart.

handgun. She sat on her porch and replaced spent cartridges in the gun with new bullets. Approximately fifteen minutes after she had seen Brown across the street, she heard rustling in the bushes near her porch on the side of her house. She got up to investigate and was shot eight times, although she did not see who fired the gun. Compton survived the incident, and when police arrived on the scene at 12:05 a.m., she told them that Brown had shot her.

Police located Brown and brought him to the scene. A detective took Brown's statement, and he reported that he had been at the home of Chenelle Tate from 10:00 p.m. to 1:30 a.m. Police called Tate, and she confirmed Brown's alibi. However, the following morning, Tate, who was on home detention at the time and did not want to "get in trouble" by helping someone conceal a crime, telephoned her own attorney and then called police to advise them that Brown was not at her home from 10:00 p.m. to 1:30 a.m., as she had first reported. *Tr.* at 231, 234. Rather, Tate told the detective, and also testified at trial, that Brown arrived at her home after she received two phone calls from him just after midnight. Tate said that Brown, who arrived "dressed in all black," was nervous, "chain smoking," and pacing. *Id.* at 225-26. Brown eventually admitted to Tate that he had shot a woman "alongside a house" and that the incident was in connection with child molest allegations that the woman made against him. *Id.* at 226. Brown showed Tate a semi-automatic pistol while at her apartment, and he wiped it off with a washcloth that Tate gave him. Police contacted Brown on his cell phone, but before he left to speak with them, Brown removed the black shirt he was wearing and left it at Tate's house.

Thereafter, the State charged Brown with attempted murder, a Class A felony, aggravated battery, a Class B felony, and carrying a handgun without a license as a Class A

misdemeanor. Prior to the start of trial, the State filed a motion in limine to exclude evidence that at approximately 9:00 p.m. on June 24, Compton had shot her gun in the air and made remarks to a group of young men outside her residence that she was angry with Brown for what he had done to her daughter. The State asserted that evidence of Compton shooting her firearm was irrelevant and that, even if relevant, it was unduly prejudicial and would distract and confuse the jury. The trial court granted the motion.

Telephone records admitted at trial confirmed that Brown called Tate from his cell phone at 12:06 a.m. and 12:11 a.m. on the night in question. When Compton's children heard the gunshots, K.C. looked out her window and saw what she believed was a male in all black clothing running from the scene. Police never found a weapon. However, they recovered ten 9mm shell casings from a semi-automatic pistol on the ledge of Compton's front porch and in the grass next to it. They also found a black t-shirt at Tate's house on her bed.

The jury found that Brown was guilty of attempted murder, aggravated battery, and carrying a handgun without a license. The trial court did not enter judgment of conviction on aggravated battery, finding that it merged into the attempted murder conviction. After identifying aggravating and mitigating circumstances, the court determined that the aggravators outweighed the mitigators and sentenced Brown to a forty-year sentence, with ten years suspended. Brown now appeals.

## **DISCUSSION AND DECISION**

### **I. Exclusion of Evidence**

Prior to trial, the State filed a motion in limine seeking to exclude any testimony that at about 9:00 p.m. on June 24, Compton shot her revolver in the air from the front porch of her residence and in front of a group of young men known as the 49<sup>th</sup> Street Boys, while stating her anger at what Brown had done to her daughter. The trial court granted the motion. Although Brown requested the court to reconsider its ruling during trial and made an offer to prove, the court declined to change its decision and, consequently, did not allow any witness to testify about the matter. Brown argues that this exclusion of evidence was in error.

The decision to admit or exclude evidence lies within the sound discretion of the trial court and is afforded great discretion on appeal. *Fugett v. State*, 812 N.E.2d 846, 848 (Ind. Ct. App. 2004). Generally, an appellate court will not reverse that decision absent a showing of manifest abuse of discretion resulting in the denial of a fair trial. *Id.* An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id.*

The State argues now, as it did at trial, that the evidence was irrelevant as to whether Brown shot Compton, which was the issue at hand and, additionally, was prejudicial and would confuse the jury. As a general rule, only relevant evidence is admissible. Ind. Evidence Rule 402. Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Evid. R. 401. Brown argues that evidence regarding the incident was relevant because it would have shown how angry Compton was at Brown, resulting in her bias toward him that led her to name him as the person who shot her. Brown is correct to the extent that evidence of bias, prejudice, or

ulterior motives on the part of a witness is relevant at trial, as it may discredit the witness or affect the weight of the witness's testimony. *Zawacki v. State*, 753 N.E.2d 100, 102 (Ind. Ct. App. 2001), *trans. denied*. However, as the State explained at trial, there was no dispute about the fact that Compton was angry with Brown. She admitted it. The evidence that she shot her gun in the air was not necessary to prove that fact. "The trial court 'properly balanced the competing interests' in the necessarily fact-sensitive determination and we conclude that the trial court was 'within its discretion in excluding the testimony.'" *State v. Motley*, 860 N.E.2d 1264, 1267 (Ind. Ct. App. 2007) (quoting J. Kirsch's separate opinion in *Washington v. State*, 840 N.E.2d 873, 890 (Ind. Ct. App. 2006), *trans. denied*.)

Brown also asserts that the evidence was relevant to show that other people (those in the crowd that observed her shoot the gun in the air) had a motive to shoot Compton. In its brief, the State asserts, and we agree, "[T]he idea that the incident gave a motive for someone else to shoot Compton was a stretch at best." *Appellee's Br.* at 7. According to Brown's offer to prove, the evidence that would have been presented was that Compton shot her gun in the air while verbally expressing her anger at Brown. There was no evidence to suggest that she threatened anyone standing around her home or that anyone was offended or angered at what she said, such that he or she would have a motive to return and shoot her eight times. Under the circumstances before us, the trial court was within its discretion when it determined that any evidence of Compton discharging her firearm in the air out of anger several hours before she was shot, even if marginally relevant, would have distracted and confused the jury.

## **II. Sufficiency**

Brown contends that the State failed to prove his guilt with adequate evidence. Specifically, Brown argues that the State failed to prove beyond a reasonable doubt that he was the person who shot Compton or that he carried a handgun without a license.

When we review a challenge to the sufficiency of the evidence, this court may not reweigh the evidence or judge the credibility of the witnesses. *Perez v. State*, 872 N.E.2d 208, 212-13 (Ind. Ct. App. 2007), *trans. denied*; *Specht v. State*, 838 N.E.2d 1081, 1094 (Ind. Ct. App. 2005), *trans. denied* (2006). We must affirm a conviction if the finder of fact heard evidence of probative value from which it could have inferred the defendant's guilt beyond a reasonable doubt. *Oldham v. State*, 779 N.E.2d 1162, 1168 (Ind. Ct. App. 2002), *trans. denied* (2003). We will consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Perez*, 872 N.E.2d at 213. A conviction may be based upon circumstantial evidence alone. *Id.*

To convict Brown of attempted murder, the State was required to prove beyond a reasonable doubt that he acted with the specific intent to kill and that he engaged in conduct constituting a substantial step toward the killing of Compton. IC 35-42-1-1; IC 35-41-5-1(a). "Intent to kill may be inferred from the nature of the attack and the circumstances surrounding the crime." *Elliott v. State*, 786 N.E.2d 799, 803 (Ind. Ct. App. 2003). The intent to kill may also be inferred from the use of a deadly weapon in a manner likely to cause death or great bodily injury. *Id.*

Brown's sufficiency argument as to both convictions (attempted murder and carrying a handgun without a license) is that there was no physical evidence linking him to the crimes.

That is, the victim did not see who shot her, the gun was never recovered, and there was no blood on his clothing. In this case, the jury's convictions primarily were based on the testimony of the victim, Compton, and Tate, who initially served as Brown's alibi. Brown argues that we may judge Tate's credibility because her testimony "is suspect," and it was inherently improbable or coerced or wholly uncorroborated. *Appellant's Br.* at 11. However, her testimony was none of the above. Tate's testimony regarding Brown's admission to her of the crime was consistent with the circumstances of how and where the shooting occurred.

Compton's trial testimony established that she was angry with Brown because she believed he had forced her minor daughter to have sex with him, and she planned to report it to the police. Brown was aware of her plan to do so because he was present during a conversation where Compton expressed her intentions to Brown's mother. At approximately 11:45 p.m. that night, while Compton was sitting on her porch, she saw Brown staring at her from across the street. He was wearing all black clothing. Compton felt that Brown was looking at her in a threatening way. As a result, she went inside and got her handgun and came back out on the porch. At about 12:00 a.m., she heard rustling noises in the bushes beside her house, and when she went to investigate, someone shot her eight times with a semi-automatic handgun. Compton did not see anyone else during the approximately fifteen minutes that elapsed between the time that she saw Brown across the street and the time she was shot.

The day after the shooting, Tate told police that she had not been truthful the previous night when she told them that Brown had been at her house from 10:30 p.m. to 1:30 a.m. She explained that, in fact, Brown had called her just after midnight, then came to her house, was



acting nervously, and eventually confessed to her that he had shot a woman from alongside a house. Brown had with him a semi-automatic handgun, and he showed it to Tate. Brown also told her that the shooting was in connection with molestation allegations. Brown was wearing all black when he arrived at Tate's house, but before he left to go speak to police, he removed his black shirt and left it at her house.

Police testified at trial that Compton was shot by 9mm bullets, as established by the casings that were ejected from a semi-automatic weapon and found by the side of her house on and near her front porch. While at Tate's home, Police found on Tate's bed a black shirt that Tate said belonged to Brown. Telephone records confirmed that Brown called Tate from his cell phone at 12:06 and 12:11 a.m. Brown maintained to police that he was at her house during that time; however, if true, that would mean Brown called Compton while he was inside her house. Brown claims that Tate made up her story in order to gain favor with police, because Tate was on home detention at the time. However, Tate testified that she was not offered anything from the State in exchange for her testimony. In the end, Brown's claims are simply a request for us to reweigh the evidence of Compton and Tate, which we cannot do. *Perez*, 872 N.E.2d at 213. The State presented sufficient evidence from which the jury was entitled to infer that Brown shot Compton eight times, including in the neck, and thereby attempted to kill her.

Brown also asserts that the evidence is insufficient to convict him of carrying a handgun without a license. This offense required the State to prove that Brown carried a handgun on or about his person, away from his dwelling or business. IC 35-37-2-1(a). After the State proves these elements, the burden shifts to the defendant to prove that he possessed

a valid license. *Harris v. State*, 716 N.E.2d 406, 411 (Ind. 1999). Here, Tate testified to seeing Brown with a semi-automatic handgun when he came to her apartment just after midnight, and he told her that he had just shot a woman with it. Brown did not prove, or otherwise claim, that he possessed a license for a handgun. Furthermore, we have found that the evidence was sufficient to establish that Brown shot Compton and thereby attempted to kill her; therefore, the jury could reasonably infer that he possessed a handgun away from his home or business immediately prior to, during, and after the attempted murder that took place away from his home or business. *See Oldham*, 779 N.E.2d at 1169 n.2 (because evidence was sufficient to allow jury to infer that defendant killed victim with gun that was never found, jury could also infer that same defendant possessed handgun away from his home or business).

Brown's convictions for attempted murder and carrying a handgun without a license were supported by sufficient evidence.

Affirmed.

RILEY, J., and MAY, J., concur.